

Bishop Defregger's Guilt

BY AUSTIN J. APP, PH.D.

The former Captain Defregger must be exonerated according to military and international law and not given "charity" because he is now a bishop.

IN GENERAL, the American press has been commendably restrained in its comments on Bishop Matthias Defregger's transmission of an order, 25 years ago, while he was a 29-year-old captain in the Germany army, to shoot 17 Italian villagers in reprisal for the partisan assassination of four German soldiers.

The Washington *Star*, for example, entitling its editorial, "Another Man's Agony," (August 22, 1969) asks that God "be the ultimate judge of Bishop Defregger's innocence or guilt."

The *Christian Century* entitles its report non-committally "German Bishop Asks Italian Village for Forgiveness," (August 6, 1969).

Catholic Press Urges Charity

Catholic publications have also been restrained. *America*, in "The Bishop Defregger Case" (Aug. 2) tells us "not to condemn him but to try to eliminate the circumstances that could impose such impossible demands." It then compares "The bishop's dilemma" to that of our young men "who prefer imprisonment to service in the armed forces."

Perhaps most expressive of American Catholic reaction is that of Father John B. Sheerin, editor of the *Catholic World*, in his syndicated column entitled, "Sheer Obedience" (*Catholic Standard*, D.C., Aug. 14). In it he generously suggests that Bishop Defregger because of his "years of service to society as priest and bishop" should be given

special "consideration in determining the penalty of his crime." He then gratuitously accuses him of "blind obedience to an immoral order," calls him "a war criminal," and keeps referring to his "commission of the crime," to "the latter's war crime," and to "one who commits war crimes." One can perhaps say that with such an advocate Bishop Defregger needs no enemies!

His Being a Bishop—Or Perhaps Vietnam—Induce Charity

Perhaps the relatively charitable press treatment so far is due to respect for the former Captain Defregger's now being an auxiliary bishop. Or perhaps it is due to the sobering experience Americans have suffered since their troops have been fighting partisan-type communists in Vietnam and have been defamed by Reds and Fellow Travellers as war criminals.

Judged as Captain, Not as Bishop

But for us both as Americans and as Christians it would seem wise to get the Rules of Warfare straight in the Defregger Case, and not to defend the bishop on grounds of charity when the proper defense is non-violation of the Rules of Warfare.

Obviously, whoever wants mercy for Defregger as a bishop but keeps referring to him as a "war criminal" directly feeds the vindictiveness of the communists and partisans whose illegal warfare provoked the reprisals in the first place.

International Law Exonerates Him

What has to be made clear is that according to International Law in force until 1949, and also according to American and British Rules of Land Warfare, Captain Defregger is not legally guilty at all, did not commit murder, and is not in any sense a war criminal. That he participated in a regrettable act of so-called "military necessity" he and everybody recognizes—as are many acts of war—but it was not an illegal or prescribed one.

Even the Nuremberg Military Tribunal, when it tried German Field Marshal Wilhelm List for taking and shooting reprisals in Yugoslavia, recognized that the right "of killing innocent members of the population as a deterrent to attacks upon its troops and acts of sabotage against installations essential to its military operations . . . has been recognized by many nations including the United States, Great Britain, France, and the Soviet Union." (See *Trials of War Criminals Before the Nuremberg Military Tribunal*, Vol. XI, p.1251.

The Tribunal quotes from the *British Manual of Military Law* (para. 458) that "it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified." It also cites the *U. S. Rules of Land Warfare*, as follows:

"The offending forces or populations generally may lawfully be subjected to appropriate reprisals. Hostages taken and held for the declared purpose of insuring against unlawful acts by the enemy forces or people may be punished, or put to death if the unlawful acts are nevertheless committed." (*U.S. Army Field Manual*, 27-10)

The passage cited from the *U. S. Rules of Land Warfare* summarize the harsh but legal status of international law during World War II. Only in 1949 did the Geneva Convention prohibit the taking of hostages and reprisals (Art. 24). Hostages are taken to forestall

treachery; reprisals, to discourage repetition. The Defregger case involves the latter.

Reprisals Legal, But Excessive Ratio, a War Crime

Accordingly, the War Crimes Tribunal did not contest Marshal List's right to take and shoot reprisals but indicted him only for an "excess but wholly unwarranted" ratio: "the killing of 20 reprisal prisoners for each German soldier was not warranted under the circumstances shown." Further, "The shooting of 100 innocent persons for each German soldier killed at Topola, for instance, cannot be justified . . ." This certainly suggests the inference that a ratio of five to one might have been considered justified. A ratio of ten to one seems to be a norm.

In the Defregger Case the ratio was seventeen men of Filetto executed for four German soldiers killed by partisans, a ratio of less than five to one. In fact, Captain Defregger had gotten the ratio lowered to this before passing the order on for execution. He thus implemented the dictum of the Nuremberg Military Tribunal: "The number of hostages shot must not exceed in severity the offenses the shooting is designed to deter."

For a Soldier, a Normal Moral Duty is Obedience

In the Defregger Case, the accepted rules of warfare were not violated. Those who contend that Captain Defregger should nevertheless have disobeyed the order, even at the cost of his own life, should realize that their policy would simply wreck the armies of the Free World, and would not in the least moderate the Reds. The Nuremberg Tribunal rightly conceded to the Germans: "Strict discipline is necessary in the organization of an army, and it becomes hard for many to believe that a violation of the orders of a superior may bring about criminal liability."

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One interesting experiment by Dr. Barnes involved thermographing members of 4 different races in which the degree of pigmentation varied greatly. The thermograph revealed the uniformity of man's skin temperatures. He found that all individuals emit infra-red radiations as a function of temperature alone—skin color or pigmentation have nothing to do with it. His thermograph revealed differences indeed but these differences were entirely dependent on the distribution of fat on the individuals, fat being an excellent insulator.

Abnormal Blood Flow Checked

Thermographs now permit physicians to check for abnormal blood flow in the body—even the restriction to blood

flow in the arm due to a tight wristband can be spotted! Such conditions as internal varicose veins or arterial occlusions can also be mapped out accurately by this new technique.

Thermography still is new as a medical diagnostic tool, but it is receiving ever-widening use. The instruments are available and it is a matter of physicians, clinics, and hospital radiologists assembling the expensive equipment. Often the hot and cold spots discovered by thermography require supporting diagnosis to pinpoint their cause. Soon you can expect your annual physical check-up to include taking a picture of you in the dark! If my uncle were still living, I know he would insist on one.

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This, in plain language, means that for a soldier the first morality is obedience—unless an order is incontrovertibly unethical—in violation of accepted rules of warfare. Captain Defregger was an army intelligence captain, not the bishop of a diocese, nor an unarmed military chaplain. He had a soldier's duty, a duty to flag and country, and the high command. It must be understood that what was a patriotic duty for American officers in World War II was so also for German officers: the Hague Regulations of 1907 declare: "Whatever may be the cause of a war . . . the same rules of international law are valid" for both sides!

Reprisals Were Justified

When Captain Defregger was ordered to shoot reprisals for the Filetto treachery, 5000 German soldiers were being assassinated by communistic partisans in three months, and 30,000 severely wounded. Imagine American reaction had German partisans done the like to our G.I.s in Germany! And often inno-

cent Italian bystanders were killed, too. For example, on April 23, 1944, partisans packed an unsuspecting trash cart with explosives, timed the fuse to go off just when each day an elderly German police detail, not a combat troop, filed by. It killed 32 of them and wounded 68 others. But it also wounded a lot of innocent Italian civilian bystanders—and killed ten of them, of whom six were children!

It was this sort of totally illegal partisan activity, often shamefully fomented and abetted, sad to relate, by the Allies, which caused the German High Command to resort to the regrettable but internationally legal use of reprisals. Under those circumstances, Captain Defregger had a moral duty to obey, to carry out orders harsh but legal and thought necessary to prevent chaos. He committed no war crime, he violated no recognized rules of war. He must be judged—and exonerated according to law, not under the cloak of charity as an amnestied war criminal!